

SENATE BILL NO. 56

INTRODUCED BY T. SCHMIDT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO NONPROFIT CORPORATIONS TO EXTEND THE PROTECTIONS OF THE STATE'S OPEN MEETING LAWS TO MEMBERS OF HOME OWNERS' OR LANDOWNERS' ASSOCIATIONS; REQUIRING NOTICE TO MEMBERS OF A HOME OWNERS' OR LANDOWNERS' ASSOCIATION OF MEETINGS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION AND PROVIDING A RIGHT TO PARTICIPATE IN THE MEETINGS; AMENDING SECTIONS 35-2-427, 35-2-428, 35-2-429, 35-2-433, 35-2-532, AND 35-2-535, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, under Article II, section 8, of the 1972 Montana Constitution, the people of Montana have a constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to final governmental decisions; and

WHEREAS, the board of directors of home owners' or landowners' associations often provide basic necessities, such as road access, water systems, and sewer systems, and otherwise perform functions that are typically performed by local governments; and

WHEREAS, a Montana resident should not have to forfeit constitutional rights of notice and opportunity to be heard before an entity exercising quasi-governmental functions; and

WHEREAS, the Legislature wishes to extend the protections of the state's open meeting laws to members of home owners' or landowners' associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-2-427, MCA, is amended to read:

"35-2-427. Regular and special meetings -- home owners' or landowners' association requirements. (1) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(2) A board of directors may hold regular or special meetings in the state or out of the state, except that regular or special meetings of a board of directors of a home owners' or landowners' association must be held

1 in the state.

2 (3) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate
3 in a regular or special meeting by or to conduct the meeting through the use of any means of communication by
4 which all directors participating may simultaneously hear each other during the meeting. A director participating
5 in a meeting by this means is considered to be present in person at the meeting. A regular or special meeting of
6 a board of directors of a home owners' or landowners' association that is conducted under the provisions of this
7 subsection (3) must comply with the member notice and participation requirements of [section 4]."

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9 **Section 2.** Section 35-2-428, MCA, is amended to read:

10 **"35-2-428. Action without meeting -- exception for home owners' or landowners' association**
11 **board of directors.** (1) ~~Unless~~ Except as provided in subsection (4), unless the articles or bylaws provide
12 otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken
13 without a meeting if the action is taken by all members of the board. The action must be evidenced by one or
14 more written consents describing the action taken, be signed by each director, and be included in the minutes
15 filed with the corporate records reflecting the action taken.

16 (2) Action taken under this section is effective when the last director signs the consent unless the
17 consent specifies a different effective date.

18 (3) A consent signed under this section has the effect of a meeting vote and may be described as a vote
19 in any document.

20 (4) The provisions of this section do not apply to a board of directors of a home owners' or landowners'
21 association."

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23 **Section 3.** Section 35-2-429, MCA, is amended to read:

24 **"35-2-429. Call and notice of meetings -- home owners' and landowners' association**
25 **requirements.** (1) ~~Unless~~ Except as provided in subsection (3) or (5), unless the articles or bylaws provide
26 otherwise ~~or unless the provisions of subsection (3) apply~~, regular meetings of the board may be held without
27 notice.

28 (2) ~~Unless~~ Except as provided in subsection (3) or (5), unless the articles; or bylaws; or subsection (3)
29 provide otherwise, special meetings of the board must be preceded by at least 2 days' notice to each director of
30 the date, time, and place, but not the purpose, of the meeting.

(3) In a corporation without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members is not valid unless each director is given at least 7 days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to 35-2-430.

(4) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or 20% of the directors then in office may call and give notice of a meeting of the board.

(5) Regular and special meetings of a board of directors of a home owners' or landowners' association are subject to the notice and participation provisions of [section 4]."

NEW SECTION. Section 4. Notice of meetings to members of home owners' and landowners' associations -- member participation -- meeting defined. (1) Regular or special meetings of a board of directors of a home owners' or landowners' association may not be held without notice to members of the association.

(2) Members of a home owners' or landowners' association must be afforded reasonable opportunity to attend and to participate in all meetings of a board of directors of the association.

(3) A board of directors of a home owners' or landowners' association shall give members notice of board meetings in a fair and reasonable manner. Any notice that conforms to the requirements of subsection (4) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(4) Notice is fair and reasonable if:

(a) the corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of the board of directors not less than 10 days before the meeting date or, if notice is mailed by certified mail, not less than 30 or more than 60 days before the meeting date; and

(b) notice of an annual or regular meeting includes a description of any matter or matters to be considered at the meeting and notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(5) If an annual, regular, or special meeting of directors is adjourned to a different date, time, or place, fair and reasonable notice must be given to the members of the new date, time, or place. If a new record date for the adjourned meeting is or must be fixed under 35-2-532, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(6) As it applies to a home owners' or landowners' association, "meeting" means the convening of a quorum of the constituent membership of a board of directors or a committee of a board, whether in person or by electronic means, to hear, discuss, deliberate, debate, or act upon a matter over which the board or committee has supervision, control, jurisdiction, or advisory power.

Section 5. Section 35-2-433, MCA, is amended to read:

"35-2-433. Committees of the board. (1) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee must have two or more directors who serve at the pleasure of the board.

(2) The creation of a committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles or bylaws to take action under 35-2-431.

(3) Sections 35-2-427 through 35-2-431, which govern meetings, action without meetings, notice, waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members. In addition, [section 4], which governs notice of directors' meetings and the right to participate to members of home owners' and landowners' associations, applies to committees of a board of directors of a home owners' or landowners' association.

(4) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under 35-2-414.

(5) A committee of the board may not:

(a) authorize distributions;

(b) approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(c) elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(d) adopt, amend, or repeal the articles or bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in 35-2-416."

Section 6. Section 35-2-532, MCA, is amended to read:

"35-2-532. Record date -- determining members entitled to notice and vote. (1) The bylaws of a

corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting or to notice under [section 4]. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members are entitled to notice of the meeting:

(a) at the close of business on the business day preceding the day on which notice is given; or

(b) if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(2) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing a record date, the board may fix in advance the record date. If a record date is not fixed, members are entitled to exercise the rights at the close of business on the day on which the board adopts the resolution relating to it or 60 days prior to the date of other action, whichever is later.

(4) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a membership meeting or to notice of a board of directors' meeting under [section 4] is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than 70 days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting."

Section 7. Section 35-2-535, MCA, is amended to read:

"35-2-535. Members' list for meeting -- home owners' or landowners' association board meetings.

(1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the

names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

(7) The provisions of this section apply to a notice that is required to be given under [section 4] of a meeting of the board of directors of a home owners' or landowners' association to members of the association."

1 NEW SECTION. **Section 8. Codification instruction.** [Section 4] is intended to be codified as an
2 integral part of Title 35, chapter 2, part 4, and the provisions of Title 35, chapter 2, part 4, apply to [section 4].

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4 NEW SECTION. **Section 9. Applicability.** [This act] applies to meetings of the board of directors of a
5 home owners' or landowners' association held on or after October 1, 2009.

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